

## REMARKS

Claims 1-22 and 25 are currently pending in the present application. It is gratefully acknowledged that the Examiner has allowed Claims 1-4, 8-22, and 25. The Examiner rejected Claims 1-22 and 25 under non-statutory obviousness-type double patenting over Claims 1-11 of U.S. Patent 6,725,054 ('054 patent) (which was the parent application to the present application). The Examiner rejected Claims 5-10, 22 and 25 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner rejected Claims 1, 4, 5 and 11 under 35 U.S.C. §112, second paragraph, as being indefinite. The Examiner rejected Claims 5-7 under 35 U.S.C. §103(a) as being obvious over Holtzman et al. (U.S. Patent 6,788,685) in view of Wheatley, III et al. (U.S. Patent 5,461,639).

Please amend Claims 1, 4, 5 and 11 as set forth herein. No new matter has been added.

Regarding the rejection of Claims 1-22 and 25 under non-statutory obviousness-type double patenting over Claims 1-11 of U.S. Patent 6,725,054, applicants respectfully maintain the right to address this issue when the claims herein are placed in condition for allowance.

Regarding the rejection of Claims 5-10, 22 and 25 under §112, second paragraph, the Examiner states that the terms “good/bad”, “sufficient/insufficient” and “pass/uncertain” render the claims indefinite. Although in other cases these terms might render a claim indefinite, it is respectfully submitted that these terms as used in the present application are in fact definite. Tables 1, 2 and 3 clearly define these terms and throughout the specification these terms are given definite and distinct meanings. Based on at least the foregoing, withdrawal of the rejection of Claims 5-10, 22 and 25 under §112 is respectfully requested.

Regarding the rejections of Claims 1, 4, 5 and 11 under §112, second paragraph, the Examiner states that the term “energy” should be changed to read “power” and was done in other claims in the past. Claims 1, 4, 5 and 11 have been amended to include the recommended amendments. Based on at least the foregoing, withdrawal of the rejections of Claims 1, 4, 5 and

11 under §112 is respectfully requested.

Regarding the rejections of Claims 5-7 under §103(a), the Examiner stated that Holtzman et al. in view of Wheatley, III et al. renders the claims obvious. Holtzman et al. discloses a method and apparatus for controlling transmission power in a CDMA communications system; and, Wheatley, III et al. discloses fast forward link power control in a code division multiple access system. Independent Claim 5 recites that a channel state is determined as “good” if the power of the power control bits is greater than the first threshold value, and that the channel state is “bad” if the power of the power control bits is less than the first threshold value. Both “good” and “bad” are specifically defined in the specification and have distinct meanings. Neither of the cited references defines a channel state as good or bad as used in the claims of the present application. Based on at least the foregoing, withdrawal of the rejections of Claims 5-7 under §103(a) is respectfully requested.

Independent Claims 5 and 7 and are believed to be in condition for allowance. Based on at least its dependence on Claim 5, Claim 6 is also believed to be in condition for allowance.

Accordingly, all of the claims pending in the Application, namely, Claims 1-22 and 25, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants’ attorney at the number given below.

Respectfully submitted,



Paul J. Farrell  
Reg. No. 33,494  
Attorney for Applicant

DILWORTH & BARRESE  
333 Earle Ovington Blvd.  
Uniondale, New York 11553  
Tel: (516) 228-8484  
Fax: (516) 228-8516  
PJF/MJM/dr